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**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

SANDRA KIRKMAN, CARLOS
ALANIZ, individually and successors-in-
interest to JOHN ALANIZ, deceased,

Plaintiff,

vs.

STATE OF CALIFORNIA, RAMON
SILVA, and DOES 1-10, inclusive,

Defendants.

Case No. 2:23-cv-07532-DMG-SSC

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

| | |
|---------------|-------------------|
| Judge: | Dolly M. Gee |
| Hearing Date: | February 28, 2025 |
| Hearing Time: | 9:30 a.m. |
| Courtroom: | 8C |

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION: SHOOT FIRST, ASK QUESTIONS LATER

On May 4, 2022, Officer Ramon Silva shot and killed John Alaniz, an unarmed Air Force veteran in the midst of a mental health crisis, just minutes after Alaniz had thrown himself in front of a semi-truck traveling at 55 miles per hour. Silva now claims he fired because he believed Alaniz was pointing a gun at his partner, Officer Van Dragt. But this justification is a post hoc fabrication, designed to shield Silva from accountability. At the time of the shooting, Silva did not announce that he had seen a gun. In fact, moments after firing, the first thing said was, “What did he have in his hand?”

Even if Silva’s mistaken perception were genuine, it was not reasonable to mistake the object in Alaniz’s hands for a gun. Two witnesses to the shooting, including Van Dragt, stated that Alaniz did not appear to have a firearm. Van Dragt testified that the object Alaniz was holding looked like a “subway sandwich,” and stated that it did not look anything like a gun. The object was likely a grey felt sunglass case, which even Silva admits looks nothing like a gun.

Defendants’ motion must be denied because this case turns on a fundamental dispute of material facts. Given the witness testimony contradicting Silva’s account, it is the role of a jury to determine whether Silva’s story is credible and whether a reasonable officer would have mistakenly perceived a gun under the circumstances, especially when it is undisputed that the actual object in Alaniz’s hands looks nothing like a gun.

Any appeal to the Ninth Circuit should promptly be deemed frivolous, as it would merely seek to avoid the jury’s rightful role in resolving the factual disputes in this case.

II. STATEMENT OF RELEVANT FACTS

A. Initial Incident and Citizen Response

On the morning of May 4, 2022, John Alaniz was experiencing a mental health crisis while he was walking alongside the shoulder of the westbound 105 freeway in Paramount, California. (PAMF 1.) At some point, Alaniz ran in front of a semi-truck that

1 was travelling westbound at approximately 55 miles per hour. (PAMF 2.) He was struck
2 and launched westward by the force of the impact, hitting his head against the pavement.
3 (PAMF 3.) The semi-truck and a white pick-up truck in the next lane both stopped to
4 avoid running him over. (PAMF 4.) Alaniz remained on the ground for nearly three
5 minutes while witnesses got out of their cars to check on him and to call for help. (PAMF
6 5.)

7 Alaniz was severely injured after being struck by multiple vehicles, bleeding
8 heavily from his head as he stumbled along the freeway shoulder. (PAMF 6, 11, 16.)
9 Witness Acosta, concerned for his safety, followed him for about 12 minutes, trying to
10 help and calling 911. (PAMF 11.) During that time, Alaniz never harmed or threatened
11 anyone—his actions were solely self-destructive. (PAMF 12–15.)

12 **B. Law Enforcement Response**

13 At approximately 11:31 a.m., Officer Ramon Silva arrived on scene, approaching
14 from the opposite direction of traffic. (PAMF 17.) Silva had learned from dispatch that
15 Alaniz was suicidal and had been trying to jump in front of vehicles. (PAMF 18.) Silva
16 knew Alaniz was potentially suffering from a mental health crisis. (PAMF 19.) Silva had
17 no information that Alaniz was armed or that he had harmed or threatened anyone other
18 than himself. (PAMF 20–21.)

19 Unlike Acosta and the other Good Samaritans, who had been managing this
20 situation admirably for more than 12 minutes, when Silva arrived, he was agitated and
21 erratic, shouting commands while inexplicably waving traffic to continue driving. (PAMF
22 22.) Silva saw Acosta, Alaniz, and another individual “standing around,” near the
23 shoulder of the highway. (PAMF 23.) Acosta, who has been helping Alaniz for nearly
24 twenty minutes, approached Silva and tried to convey some information to him, but Silva
25 ignored him and screamed, “Move! Move! Move!” (PAMF 24.) Silva does not even
26 attempt to gather information from Acosta to learn critical facts like whether anyone is
27 injured, whether Alaniz is attacking or threatening anyone, or whether Alaniz has a
28 weapon. (PAMF 25.)

1 Van Dragt arrived in his patrol car around 10 seconds after Silva and positioned his
2 vehicle at an angle to the shoulder between Alaniz and Silva, about 60 feet in front of
3 Silva. (PAMF 26.) Van Dragt exited his car, saw Alaniz standing on the shoulder with his
4 hands in his pockets, and moved toward the back of his vehicle while unholstering his
5 gun. (SUF 23, 25.)

6 At the same time, Silva approached, unholstering his weapon and ordering Alaniz
7 to show his hands. (PAMF 27.) With his hands visible, Alaniz started walking toward Van
8 Dragt before breaking into a slow run. (PAMF 29.) Van Dragt saw that Alaniz did not
9 have a gun or a knife, so he holstered his firearm and drew his Taser while repositioning
10 toward the front of his car. (PAMF 30.)

11 As Alaniz rounded the rear of Van Dragt's patrol unit. Van Dragt deployed his
12 taser, striking Alaniz and causing him to seize up. (PAMF 31.) The autopsy report
13 indicates that the taser barbs penetrated Alaniz, which would likely mean the Taser was
14 effective. (PAMF 32.) While Alaniz was seizing up from the effects of the Taser, Silva
15 shot five rounds at Alaniz without warning, striking his left leg, his right leg, and his
16 chest. (PAMF 33.) Alaniz died from his injuries. (PAMF 34.)

17 More than two minutes after killing Alaniz, Silva and two other officers put his
18 limp body in handcuffs. (PAMF 35.) A witness can be heard exclaiming, "You guys are
19 going to handcuff a dead guy? He's dead! He's dead! You're handcuffing a dead guy!"
20 (PAMF 36.)

21 **C. Alaniz Was Unarmed**

22 It is undisputed that Alaniz was not armed with any type of weapon when he was
23 fatally shot by Silva.

24 Acosta saw the entire incident and testified that he did not perceive a gun in
25 Alaniz's hand. (PAMF 37.) Van Dragt did not see anything that even "looked like a
26 firearm in any way." (PAMF 38.)

27 Acosta was positioned several feet west of Silva's motorcycle and saw the entire
28 incident. (PAMF 39.) As Alaniz moved toward the officers, Acosta saw him put his hand

1 into his pocket. (PAMF 40.) But Acosta did not see the individual pull any object out of
2 his pocket prior to the shots. (PAMF 41.) Certainly, he did not see anything that looked
3 like a gun. (PAMF 41.)

4 Van Dragt agrees that Alaniz did not appear to be armed with a gun. (PAMF 42.)
5 He claims he saw Alaniz pull out an objection from his jacket pocket before he started
6 running in his direction, but he describes the object as looking like “a subway sandwich.”
7 (PAMF 42.) Van Dragt subsequently testified that what he saw in Alaniz’s hand was
8 probably the gray sunglass case that was found at the scene. (PAMF 43.) He is certain that
9 he did not see a gun, otherwise he would not have holstered his firearm. (PAMF 44.)

10 Finally, despite what Silva and his attorney say now, the evidence shows that *at the*
11 *time of the shooting*, Silva did not perceive a gun in Alaniz’s hand. Seconds after the
12 shooting, Silva and Van Dragt have this important exchange:

13 **Silva:** What did he have in his hand? Was that a gun?

14 **Van Dragt:** No, it was nothing.

15 (PAMF 45.) When shown a picture of the gray sunglass case that was most likely the
16 object in Alaniz’s hands, Silva admitted that it “doesn’t look like a gun, obviously”
17 (PAMF 46.)

18 Silva was trained to yell “gun” and order armed suspects to drop their weapon if he
19 saw a suspect draw a gun, but he did neither in this case. (PAMF 47–50.) Such
20 announcements were feasible because about 5 seconds passed between when he says he
21 saw the gun and when he shot. (PAMF 51.)

22 Even if we assume Silva honestly believed he saw a gun, his mistake would still be
23 entirely unreasonable. A felt sunglass case does not have the identifying features of a
24 firearm such as a barrel, trigger, trigger guard, grip, or magazine. (PAMF 52.) Further,
25 the fact that two other witnesses said they did not perceive anything that looked like a gun
26 casts doubt on the reasonableness of Silva’s mistake. (PAMF 53, 54.)
27
28

D. Van Dragt Tased Alaniz and Alaniz Seized up and Turned Away From the Officers Before Silva Shot Him

Silva admits that he heard the Taser deploy before he opened fire, though he claims he mistook the sound for gunfire. (PAMF 55.) Video footage from Silva’s perspective clearly shows Van Dragt unholstering his Taser, aiming it, and successfully striking Alaniz. (PAMF 56.) Alaniz’s autopsy confirms that he was struck in two places, completing a full circuit, which explains why he seized up in reaction to the Taser. (PAMF 57.) The video further shows Alaniz turning away from the officers after being struck. (PAMF 58.)

Silva—who heard and saw the Taser deploy, witnessed Alaniz seize up and turn away—chose to shoot even though non-lethal force had already been deployed and was actively neutralizing any perceived threat. (PAMF 59.) Moreover, at the moment Silva opened fire, Alaniz was not in a “shooter’s stance.” (PAMF 60.) Instead, he had already been struck by Van Dragt’s Taser, seized up, and turned away from the officers. (PAMF 61.)

E. Contemporaneous Witness Reactions

Witnesses at the scene were shocked that Silva used deadly force under the circumstances. Acosta, who witnessed the entire encounter, was shocked that Silva shot Alaniz; he did not believe lethal force was necessary and thought the officers should have used non-lethal means to take him into custody. (PAMF 62.) Clark also witnessed the incident and thought the same, stating that “they could have done anything they wanted to keep this man alive, but they fucking killed this man.” (PAMF 63.) Van Dragt was not expecting gunshots and explained that he would not shoot someone just because the person is suicidal, even if they did position their body in a shooting stance. (PAMF 64.)

III. LEGAL STANDARD

A. Summary Judgment Standards

Summary judgment is only appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ.

1 P. 56. The burden of establishing the absence of a genuine issue of material fact lies with
2 the moving party. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). At summary
3 judgment, a court’s function is not to weigh the evidence, make credibility determinations,
4 or determine the truth but to determine whether there is a genuine issue for trial. *See*
5 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). In ruling on summary
6 judgment, the Court must view the evidence and draw all reasonable inferences therefrom
7 in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S.
8 144, 158–59 (1970). A fact is “material” if its proof or disproof is essential to an element
9 of the plaintiff’s case. *Celotex Corp.*, 477 U.S. at 322–23. A factual dispute is “genuine”
10 “if the evidence is such that a reasonable jury could return a verdict for the nonmoving
11 party.” *Id.* at 248. Even entirely circumstantial evidence is sufficient to create a triable
12 issue of fact. *Hopkins v. Andaya*, 958 F.2d 881, 888 (9th Cir. 1992).

13 Where there is video of the use of excessive force, the Court must view the facts in
14 the light depicted by the videotape. *Scott v. Harris*, 550 U.S. 372, 380–81 (2007). Even
15 when there is video evidence, if reasonable factfinders could interpret it differently,
16 summary judgment may be inappropriate. *See S.R. Nehad v. Browder*, 929 F.3d 1125,
17 1132–39 (9th Cir. 2019).

18 In deadly force cases such as this, where the decedent cannot testify, the Court must
19 carefully examine all evidence in the record to determine whether the officers’ story is
20 internally consistent and consistent with known facts. *Gonzalez v. City of Anaheim*, 747
21 F.3d 789, 794–95 (9th Cir. 2014). The Court must also examine circumstantial evidence
22 that, if believed, would tend to discredit the police officer’s story, all to “ensure that the
23 officer[s] [are] not taking advantage of the fact that the witness most likely to contradict
24 [their] story—the person shot dead—is unable to testify.” *Id.*

25 **B. Mistakes of Fact in Excessive Force Cases**

26 An officer’s unreasonable factual mistake can lead to a constitutional violation. *See*
27 *Torres v. City of Madera*, 648 F.3d 1119, 1127 (9th Cir. 2011) (reversing summary
28 judgment because a jury could find that officer’s mistake of fact was unreasonable); *Glenn*

1 *v. Washington Cnty.*, 673 F.3d 864, 871 (9th Cir. 2011) (holding that not all errors in
2 perception or judgment are reasonable and that the Constitution does not forgive an
3 officer's every mistake); *see also* Ninth Circuit Model Civil Jury Instructions § 9.25
4 (2024) (listing "whether a reasonable officer would have or should have accurately
5 perceived a mistaken fact" as a factor *for the jury to consider* in excessive force cases).

6 When an officer's use of force is based on a mistake of fact, the question of whether
7 the mistake was reasonable is a triable issue of fact. *Diaz v. Cnty. of Ventura*, 512 F. Supp.
8 3d 1030, 1042 (C.D. Cal. 2021).

9 **C. Qualified Immunity**

10 In analyzing §1983 claims of excessive force, courts engage in a two-pronged
11 analysis to determine whether qualified immunity applies; an officer is not entitled to
12 qualified immunity where "(1) facts viewed in the light most favorable to the injured party
13 show that the officer violated a constitutional right and (2) the right was clearly
14 established at the time of the alleged misconduct." *Ford v. City of Yakima*, 706 F.3d 1188,
15 1192 (9th Cir. 2013). A right is clearly established where its "contours . . . [are]
16 sufficiently clear [such] that a reasonable official would understand that what he is doing
17 violates that right." *Anderson*, 483 U.S. at 640. This requires "cases relevant to the
18 situation [the officer] confronted," *Brosseau v. Haugen*, 543 U.S. 194, 200 (2004),
19 however it does "not require a case directly on point," *Ashcroft v. al-Kidd*, 563 U.S. 731,
20 741 (2011). "[U]npublished decisions can be considered in determining whether the law
21 was clearly established." *Bahrampour v. Lampert*, 356 F.3d 969, 977 (9th Cir. 2004).

22 **IV. ARGUMENT**

23 This case comes down to two determinative questions: (1) did Silva believe he saw
24 a gun, and (2) was his mistake reasonable. Viewing the facts in the light most favorable to
25 Plaintiffs, a jury could find in Plaintiffs' favor on both questions, so the motion should be
26 denied. *Diaz*, 512 F. Supp. 3d at 1042 (denying summary judgment for similar reasons).
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1 **A. Fourth Amendment Claim**

2 When evaluating a claim of excessive force, the inquiry is whether the officers’
3 actions are “objectively reasonable” in light of the facts and circumstances confronting
4 them. *Glen*, 673 F.3d at 871 (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)).
5 “This inquiry requires a careful balancing of the nature and quality of the intrusion on the
6 individual’s Fourth Amendment interests against the countervailing governmental interest
7 at stake.” *Id.* The court must “balance the amount of force applied against the need for
8 that force.” *Bryan v. McPherson*, 630 F.3d 805, 823-24 (9th Cir. 2010).

9 “The intrusiveness of a seizure by means of deadly force is unmatched.” *Tennessee*
10 *v. Garner*, 471 U.S. 1, 9 (1985). “Law enforcement officers may not shoot to kill unless,
11 at a minimum, the suspect presents an immediate threat [of death or serious bodily injury]
12 to the officer or others or is fleeing and his escape will result in serious threat of injury to
13 persons.” *Harris v. Roderick*, 126 F.3d 1189, 1201 (9th Cir. 1997). Governmental
14 interests to balance against the type of force used include the following factors: “(1) the
15 severity of the crime; (2) whether the suspect posed an immediate threat [of death or
16 serious bodily injury] to the officers’ or public’s safety; and (3) whether the suspect was
17 resisting arrest or attempting to escape.” *Espinosa v. City & Cnty. of San Francisco*, 598
18 F.3d 528, 537 (9th Cir. 2010) Other significant factors to consider are the availability of
19 alternative methods to effectuate an arrest or overcome resistance and whether the officer
20 gave a warning that deadly force would be used. *Nelson v. City of Davis*, 685 F.3d 867,
21 882 (9th Cir. 2012).

22 Under the Fourth Amendment, an officer cannot shoot someone because he is not
23 certain that the person is unarmed. *Garner*, 471 U.S. at 20 (when a suspect “appear[s] to
24 be unarmed, though [the officer] could not be certain that was the case,” under the Fourth
25 Amendment that means the officer has “no articulable basis to think [the suspect] was
26 armed.”)

1 i. The Shooting Violated the Fourth Amendment

2 The second *Graham* factor, which is most important of the three factors, weighs in
3 Plaintiffs' favor because Alaniz was unarmed and posed no immediate threat of death or
4 severe bodily injury to anyone. Further, at the time he was shot, he had already been
5 struck effectively by Van Dragt's Taser such that any minimal threat posed had dissipated.

6 The Defendants appear to concede that Alaniz did not in fact pose an immediate
7 threat of death or severe bodily injury. Instead, Defendants argue that Silva reasonably
8 believed Alaniz posed such a threat because he mistakenly perceived Silva was pointing a
9 gun at Van Dragt. This argument fails for two reasons: (1) there is compelling evidence
10 that Silva did not mistakenly perceive a gun and that he concocted that story after the fact;
11 and (2) even if he did mistakenly perceive a gun, his mistake was unreasonable because
12 the object in Silva's hand looked nothing like a gun and two other witnesses who
13 perceived the same events said they did not see Alaniz raise a gun at the officers.

14 a. *Silva Did Not Mistakenly Perceive Alaniz Pointing a Gun*

15 Silva's claim that he saw a gun in Alaniz's hand is contradicted by both
16 contemporaneous evidence and his own actions. Immediately after the shooting, Silva
17 asked Van Dragt, "What did he have in his hand?"—a question that suggests he did not
18 actually see a gun. If he had, there would be no need to ask. A jury could reasonably infer
19 from this exchange that Silva never honestly believed Alaniz was armed.

20 Further, Silva's conduct during the incident undermines his credibility. He was
21 trained to yell "Gun!" upon perceiving a firearm and to order an armed suspect to drop
22 their weapon before using deadly force. Here, although five full seconds passed between
23 when Silva claims he saw a gun and when he fired, he did neither. These omissions
24 support the conclusion that Silva never actually perceived a gun. *See Diaz*, 512 F. Supp.
25 3d at 1042 (denying summary judgment where similar failures to react indicated an officer
26 did not truly believe a suspect was armed).

27 Van Dragt's testimony that he saw nothing resembling a gun also creates a material
28 dispute of fact as to whether Silva genuinely believed he saw one. *See C.V. by and*

1 *through Villegas v. City of Anaheim*, 823 F.3d 1252, 1256 (9th Cir. 2016) (holding that
2 summary judgment was improper where officers' accounts differed on key points,
3 including whether a suspect reached for a weapon). Here, just as in *Villegas*, conflicting
4 testimony between officers undermines Silva's claim and raises a question that must be
5 resolved by a jury.

6 Plaintiffs also dispute whether Silva had time to perceive Alaniz's stance and react
7 accordingly. Silva's view of Alaniz was obstructed by Van Dragt's vehicle until just half a
8 second before he fired. After the shooting, Silva had the opportunity to review the footage
9 frame by frame and construct a justification for his actions, but a jury—watching the
10 incident unfold in real time—could conclude that he lacked sufficient time to perceive a
11 supposed 'shooter's stance' before firing. *See Longoria v. Pinal Cnty.*, 873 F.3d 699, 707
12 (9th Cir. 2017) (finding a material dispute about "whether, as a matter of fact, [the officer]
13 could have had enough time to perceive the alleged "shooter's stance" at the moment he
14 claims to have done so and then shoot [the decedent] in response to that observation at the
15 time the videos show he shot him").

16 In *Cruz v. City of Anaheim*, 765 F.3d 1076 (9th Cir. 2014), the Ninth Circuit
17 recognized that circumstantial evidence can discredit an officer's claim that they
18 perceived a deadly threat. Officers in that case killed an unarmed man who they claimed
19 reached for his waistband. The Court found that a reasonable jury could determine that an
20 officer's testimony is implausible when it contradicted the physical evidence, eyewitness
21 accounts, or common sense. *Id.* Ultimately the Court denied summary judgment because a
22 jury "could [] reasonably conclude that the officers lied" about what they had perceived.
23 *Id.* at 1080.

24 Just as in *Cruz*, a jury could reasonably infer from the evidence that Silva did not
25 actually perceive a gun before shooting and that his assertion to the contrary is not
26 credible.
27
28

b. *If Silva Did Mistakenly Perceive Alaniz Pointing a Gun, His Mistake Was Unreasonable*

Even if Silva was genuinely mistaken, summary judgment should still be denied because his mistake was not reasonable.

First, the object in Alaniz's hands looked nothing like a gun. Van Dragt stated that the object resembled a "subway sandwich" and said that the object did not look anything like a gun. The reasonableness of an officer's actions and beliefs must be evaluated from the perspective of a reasonable officer on the scene. *Plumhoff v. Rickard*, 572 U.S. 765, 775 (2014). The fact that another officer at the scene, Van Dragt, says that the object in Alaniz's hands did not look anything like a gun is compelling evidence showing that a reasonable officer at the scene would not have made Silva's mistake. Moreover, the object in Alaniz's hands was later identified as a gray sunglass case, which Silva himself admitted "obviously does not look like a gun." Additionally, Acosta, another witness, did not perceive anything in Alaniz's hand that resembled a gun.

Second, dispatch logs and witness testimony confirm that throughout the entire encounter, Alaniz was never reported to be armed. Silva arrived at the scene knowing he was responding to a mental health crisis, not a serious crime in progress. This contributes to the totality of the circumstances faced by Silva and makes it less reasonable to assume that the object in Alaniz's hand was a gun. *See Est. of Elkins v. Pelayo*, 737 F. App'x 830, 831 (9th Cir. 2018) (denying summary judgment in part because decedent was "unarmed at the time he was killed, he had no history of carrying firearms, no one had told the police that [he] was armed or had a history of using a gun").

Third, Silva had clear evidence that Alaniz was unarmed based on the actions of Van Dragt, who was positioned closer to Alaniz just prior to the shooting. Van Dragt holstered his firearm and drew his Taser at the same time Silva says he saw Alaniz take something out of his pocket. Had Van Dragt seen a gun at that point, he would not have put away his firearm in favor of a less-lethal alternative. Silva, who had a clear line of sight to Van Dragt, witnessed this decision and a reasonable officer would have taken that

1 into consideration as part of the totality of the circumstances in considering whether he
2 was facing a lethal threat.

3 Fourth, Silva fired on Alaniz *after* Van Dragt successfully struck Alaniz with his
4 Taser, causing Alaniz to seize up and turn away from the officers. Under these
5 circumstances, a reasonable officer would not believe Alaniz was pointing a gun at the
6 officers.

7 Finally, witness reactions to the shooting further confirm the unreasonableness of
8 Silva's perception. Acosta and Clark, both of whom observed the incident in real-time,
9 were shocked that Silva fired, and Van Dragt admitted he was surprised to hear gunshots
10 under the circumstances. Van Dragt testified that he would not use lethal force on an
11 unarmed suicidal person simply because they took a particular stance.

12 This case is nothing like the tragic cases where police officer mistake fake weapons
13 for real ones, e.g., *Est. of Strickland v. Nevada Cnty.*, 69 F.4th 614, 617 (9th Cir. 2023),
14 where officers thought the decedent had a gun but it turned out to be a replica gun, or
15 *Napouk v. Las Vegas Metro. Police Dep't*, 123 F.4th 906, 916 (9th Cir. 2024), where
16 officers mistakenly believed a man had a bladed weapon, but he turned out to have a toy
17 sword. Those cases held that the officer's mistake was reasonable because they could not
18 be expected to tell the difference between objects that look so similar. But here, not only
19 could a reasonable juror find that the object in Alaniz's hands did not look like a gun,
20 Defendant Silva himself admits the object looks nothing like a gun.

21 Thus, for all the reasons above, a jury could find that a reasonable officer at the
22 scene would have perceived that Alaniz was unarmed and pose no immediate threat of
23 death or severe bodily injury. Therefore, the second *Graham* factor weighs in Plaintiffs'
24 favor.

25 *c. The Other Graham Factors Weigh in Plaintiffs' Favor*

26 The first and third *Graham* factors also weight in Plaintiffs' favor. Alaniz had
27 committed no serious crime, and courts have consistently held that when a suspect is not
28 suspected of committing a violent crime, the first factor weighs against the use of

1 significant force. *See Deorle v. Rutherford*, 272 F.3d 1272, 1280 (9th Cir. 2001). The third
2 factor also weighs in Plaintiffs' favor because Alaniz was not in the act of fleeing nor was
3 there any real risk of him escaping, given the number of officers at the scene and the
4 helicopter monitoring events from above. *See Diaz*, 512 F. Supp. 3d at 1044.

5 Additional factors considered by the Ninth Circuit militate in favor of Plaintiffs, as
6 well. The availability of less intrusive alternatives is a critical consideration in assessing
7 the reasonableness of force. *Glenn*, 673 F.3d at 876. Here, less-lethal force was available
8 and actively working when Silva fired. Unlike Silva, Van Dragt holstered his firearm and
9 used his Taser, which effectively struck and incapacitated Alaniz. A jury could reasonably
10 conclude that Van Dragt acted appropriately while Silva did not and that Silva erred by
11 failing to assess whether non-lethal force had de-escalated the situation.

12 Another key factor is whether the suspect showed signs of mental illness or
13 emotional distress. *Deorle*, 272 F.3d at 1283. Here, Silva knew that Alaniz was suicidal
14 and had been running into traffic. "A jury could find that given [Alaniz's] behavior,
15 officers perceived (or should have perceived), an emotionally disturbed individual acting
16 out and in need of help, rather than a hardened criminal intending harm and in need of
17 taking down." *Diaz*, 512 F. Supp. 3d at 1044. This factor further diminishes the
18 government's interest in using deadly force.

19 Finally, the failure to warn before using deadly force weighs heavily against Silva.
20 *Garner*, 471 U.S. at 11–12, emphasizes that warnings should be given when feasible.
21 Silva had about five seconds from allegedly seeing a gun to firing but never issued a
22 warning of any kind. A jury could find that a warning was feasible and Silva's failure to
23 give one was unreasonable.

24 *d. Defendants' Arguments Miss the Mark*

25 Defendants rely on a few zoomed-in frames from Silva's body-worn camera—
26 expertly enhanced at their request—ignoring the well-established principle that the
27 reasonableness of force must be judged from the "perspective of a reasonable officer on
28 the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396.

1 Courts assess video evidence as part of the totality of the circumstances but should avoid
2 overemphasizing individual frames—each capturing only 0.03 seconds—at the expense of
3 the full context. In *Longoria v. Pinal County*, the Ninth Circuit rejected a district court’s
4 frame-by-frame analysis of video footage, emphasizing that an officer at the scene does
5 not perceive a “frozen frame” detached from the unfolding events. 873 F.3d at 706,
6 Plaintiffs dispute that Silva perceived what he later described as a “shooter’s stance” at the
7 time of the shooting. His claim to have seen such a stance only emerged after he reviewed
8 the footage, suggesting he may have shaped his account to fit the video. If the video had
9 instead depicted Alaniz’s hand moving toward his waistband, Silva would likely have
10 framed his justification differently.

11 Even under a frame-by-frame analysis, material disputes remain. While some
12 frames may suggest Alaniz briefly assumed something like a shooter’s stance, the critical
13 moments before the shots show otherwise—he was no longer in such a stance, and the
14 footage supports Plaintiffs’ claim that he was reacting to being struck by a Taser, seizing
15 up, and turning away. Selecting only favorable frames while ignoring the rest distorts the
16 summary judgment standard, which requires viewing the evidence in the light most
17 favorable to the non-moving party.

18 Defendants claim that a “uniform body of case law” shows that Silva’s use of
19 deadly force was reasonable even though Alaniz had no weapon in his hands. (Motion at
20 22.) But what they provide the Court is a disingenuous mischaracterization of the law,
21 stitched together from out-of-context excerpts—many of which come from cases that
22 actually ruled *against* officers, like *Cruz*, 765 F.3d 1076 (summary judgment denied
23 regarding use of deadly force), *Longoria*, 873 F.3d 699 (same), *Hyer v. City & Cty. of*
24 *Honolulu*, 118 F.4th 1044 (9th Cir. 2024) (same); and *Rodriguez v. Swartz*, 899 F.3d 719
25 (9th Cir. 2018) (same).

26 Defendants misrepresent to the Court the holding of *Abuka v. City of El Cajon*, No.
27 17-CV-347-BAS-NLS, 2019 WL 1077495, at *7 (S.D. Cal. Mar. 7, 2019), claiming the
28 court held that deadly force was objectively reasonable when a man pulled a metal object

1 from his pocket and moved into a shooter's stance. (Motion at 23:5–9.) The court held the
2 exact opposite: "there are disputed issues of material fact as to whether the use of deadly
3 force was reasonable in the situation." 2019 WL 1077495, at *7.¹ Defendants miscite
4 *Barnes v. City of Pasadena*, 508 F. App'x 663 (9th Cir. 2013), as holding that deadly force
5 was "objectively reasonable" (Motion 22:3–7, 25), but *Barnes* was not a Fourth
6 Amendment case, so the Court did not rule that the officers' force was or was not
7 objectively reasonable.²

8 Defendants cite several cases that are closer to being on point, but they are all
9 unpublished and readily distinguishable. In *Arian v. City of Los Angeles*, No.
10 CV1205261RGKPLAX, 2013 WL 12081081, at *1 (C.D. Cal. Apr. 30, 2013), the
11 shooting happened at night, and in the poor lighting conditions *multiple officers* mistook a
12 black phone for a gun when the decedent pointed it at them in a shooting stance. Here, it
13 was daytime and two civilians and another officer at the scene said the object in Alaniz's
14 hands did not look like a gun. In *Corrales v. Impastato*, 650 F. App'x 540 (9th Cir. 2016),
15 the shooting happened during a high-risk undercover drug operation, and the decedent
16 rapidly pulled his hand out from his waistband while approaching the officer in an
17 aggressive manner. Here, Silva was responding to a mental health call, not dealing with a
18 hardened criminal. Furthermore, in *Corrales*, there was no testimony to dispute that the
19 decedent appeared to be drawing a gun, which is very different from here where Van
20 Dragt says the object Alaniz was holding looked nothing like a gun.

21 For all the reasons above, a jury could find that Silva's use of deadly force was
22 unreasonable under the circumstances.
23
24

25 ¹ Defense counsel's mistake is surprising given that he was the lead attorney in the *Abuka*
26 case and wrote the motion for summary judgment. While the Court did rule in
27 Defendants' favor on qualified immunity grounds, that is a different issue.

28 ² *Barnes* is distinguishable anyway since in that case, unlike here, "Plaintiffs pointed to no
evidence suggesting that the officers did not believe, or should not have believed, [the
object in decedent's hand] to be a gun" *Id.* at 665.

1 ii. Silva is Not Entitled to Qualified Immunity

2 Silva is not entitled to qualified immunity for two reasons. First, there are critical
3 disputed issues of material fact that preclude qualified immunity at this stage. Second, at
4 the time of the shooting, it was clearly established that the use of deadly force against a
5 non-threatening suspect is unreasonable.

6 First, disputed issues of material fact preclude granting qualified immunity on
7 summary judgment. *See Johnson v. Jones*, 515 U.S. 304, 313 (1995); *Wilkins v. City of*
8 *Oakland*, 350 F.3d 949, 956 (9th Cir. 2003) (“Where the officers’ entitlement to qualified
9 immunity depends on the resolution of disputed issues of fact in their favor, and against
10 the non-moving party, summary judgment is not appropriate). This case mostly hinges on
11 the resolution of these two factual disputes: (1) whether Silva believed he saw a gun, and
12 (2) whether his mistake reasonable. But there are other disputed, such as: (1) whether
13 Silva saw Alaniz take a shooting stance; (2) whether Alaniz had *any* object in his hand;
14 (3) if he did have an object in his hand, whether that object was a grey sunglasses case; (4)
15 whether the sunglass case look like a gun; (5) whether Alaniz was running toward the
16 officers or turning away from them just prior to the shots; (6) whether it was feasible for
17 Silva to give a warning; (7) whether alternative less-lethal force options were available
18 and likely to be effective; (8) whether Van Dragt’s use of the taser was effective; (9)
19 whether Alaniz was running slowly or quickly. Summary judgment is not appropriate
20 given the amount of factual disputes in this case. *See Newmaker v. City of Fortuna*, 842
21 F.3d 1108, 1117 (9th Cir. 2016) (holding that summary judgment was inappropriate where
22 there was disputed evidence about whether the officers were telling the truth about when,
23 why, and how the plaintiff was shot).

24 Second, Silva is not entitled to qualified immunity because on the date of the
25 incident, it was clearly established that “the use of deadly force against a non-threatening
26 suspect is unreasonable.” *Zion*, 874 F.3d at 1076 (9th Cir. 2017). “It has long been clear
27 that ‘[a] police officer may not seize an unarmed, nondangerous suspect by shooting him
28

1 dead.”” *A. K. H by & through Landeros v. City of Tustin*, 837 F.3d 1005, 1013 (9th Cir.
2 2016) (citing *Garner*, 471 U.S. at 11).

3 Under these circumstances, viewing the facts in the light most favorable to
4 Plaintiffs, no reasonable officer could believe that it was lawful to, without any warning,
5 shoot and kill an unarmed person who posed no immediate threat to any law enforcement
6 officer or anyone else. In other words, this case is the rare but “obvious one where
7 *Graham* and *Garner* alone offer a basis for decision.” *Brosseau*, 543 U.S. at 199; *see*
8 *Estate of Kosakoff v. City of San Diego*, 460 F.Appx. 652, 654 (9th Cir. 2011) (denying
9 qualified immunity on excessive force claim because, if jury were to find plaintiff “posed
10 no significant threat[,]” fact that deadly force employed by officers was unconstitutionally
11 excessive would be “obvious as a matter of law”) (internal quotation marks omitted).

12 But even if this were not an obvious case, the law was established with sufficient
13 particularity in many cases. In *Vos v. City of Newport Beach*, 892 F.3d 1024, 1035 (9th
14 Cir. 2018), the Ninth Circuit found a plausible constitutional violation in a police shooting
15 case where the “officers confronted a reportedly erratic individual that took refuge in a 7-
16 Eleven, cut someone with scissors, asked officers to shoot him, simulated having a
17 firearm, and ultimately charged at officers with something in his upraised hand.” *Id.* at
18 1035. Although the *Vos* court determined that at the time of the event (May 29, 2014)
19 existing precedent had not placed the conclusion that officers acted unreasonably in those
20 circumstances beyond debate, the *Vos* court’s decision put officers on notice (effective
21 June 11, 2018 the date of the decision) that such conduct could result in a constitutional
22 violation.

23 In *Deorle*, 272 F.3d 1272, the court denied summary judgment, holding that it is
24 objectively unreasonable for an officer to shoot an unarmed, non-threatening individual
25 who has committed no serious offense, is mentally or emotionally disturbed, receives no
26 warning, poses no flight risk, and presents no reasonable threat. *Id.* at 1285.

27 In *Longoria*, 873 F.3d 699, an officer shot and killed Longoria after a high-speed
28 chase, despite Longoria being struck with a less-lethal round and a Taser. The officer

1 claimed he saw Longoria in a “shooter’s stance” holding a weapon, but the court found a
2 jury could determine the officer either misperceived the stance or should have recognized
3 Longoria was reacting to the non-lethal force rather than posing a threat. *Id.* at 708.

4 In *Espinosa v. City & Cnty. of San Francisco*, 598 F.3d 528, officers shot and killed
5 an unarmed suicidal suspect hiding in an attic. One officer testified that she shot because
6 she saw the suspect move his right arm and believed he would shoot her. The other
7 testified that he saw something in the suspect’s hands that looked like a gun. The court
8 found the force could be determined unreasonable, as the suspect had no escape, was
9 unarmed, and posed no threat to the public. *Id.* at 538.

10 In *Collender v. City of Brea*, 605 F. App’x 624 (9th Cir. 2015), the Ninth Circuit
11 held that a jury could find an officer acted unreasonably in shooting a suspect, who had
12 committed an armed robbery earlier but was unarmed at the time. When officer pointed
13 their rifles at the suspect and told him to freeze, he instead ran across the street and faced
14 the officer with his arms outstretched. He then lowered his left arm towards his left front
15 pocket, at which point an officer shot and killed him. The court held a jury could conclude
16 the suspect posed no immediate threat. *Id.* at 628–29.

17 Defendants rely on dicta in *Cruz*, 765 F.3d 1076, that it would be “unquestionably
18 reasonable for police to shoot a suspect in [the decedent’s] position if he reaches for a gun
19 in his waistband, or even if he reaches there for some other reason.” *Id.* at 1078. This type
20 of dicta cannot be used to establish the law for qualified immunity purposes. See *al-*
21 *Kidd*, 563 U.S. at 741–42 (finding dicta to fall short of clearly establishing the law).
22 Regardless, *Cruz* is distinguishable. There, officers knew the suspect was armed, had a
23 felony firearm conviction, and was a gang member. A confidential informant also warned
24 the suspect said he “was not going back to prison.” During a traffic stop, he attempted to
25 flee, backed into a patrol car, then exited and allegedly reached for his waistband. *Id.* at
26 1077–78. Here, none of those factors were in play.

27 For all the reasons above, the Court should find that Silva violated Alaniz’s clearly
28 established rights, and denied Defendants’ motion.

1 **B. Fourteenth Amendment**

2 Contrary to Defendant's argument, "although most meritorious purpose to harm
3 claims will involve evidence of ulterior motive or bad intent separate and apart from
4 evidence of an unreasonable use of force..., [i]n some cases, a use of force might be so
5 grossly and unreasonably excessive that it alone could evidence a subjective purpose to
6 harm." *Nehad*, 929 F.3d at 1140.

7 In this case, viewing the facts in the light most favorable to the Plaintiffs, Silva shot
8 and killed an Air Force veteran suffering from a mental health crisis on the side of the
9 road even though he could see he was unarmed and did not pose an immediate threat of
10 death or serious bodily injury to anyone. Silva's force was so grossly excessive that it
11 alone could evidence a subjective purpose to harm, and as such, a jury could find him
12 liable under the Fourteenth Amendment.

13 As discussed above, qualified immunity should not be applied here given the
14 amount of genuine disputes of material fact.

15 **C. State Law Claims**

16 Plaintiffs are entitled to a jury trial on their battery, negligence, and Bane Act
17 claims for the same reasons they are entitled to one on their excessive force claim. *Munoz*
18 *v. City of Union City*, 120 Cal. App. 4th 1077, 1121 n.6 (2004) (excessive force claims
19 and state battery claims require proof of an officer's unreasonable conduct, making federal
20 cases instructive). Qualified immunity does not apply to state law claims, nor is Silva
21 immune under any statute.

22 Silva's shooting of Alaniz also supports Plaintiffs' Bane Act claim. The Ninth
23 Circuit in *Reese v. County of Sacramento*, 888 F.3d 1030 (9th Cir. 2018), held that
24 reckless disregard for constitutional rights demonstrates specific intent to deprive those
25 rights. *Cornell v. City and County of San Francisco*, 17 Cal. App. 5th 766 (2017),
26 confirmed that the Bane Act does not require a separate "threat, intimidation, or coercion"
27 beyond the constitutional violation itself. Whether Silva knew his actions were unlawful is
28 irrelevant; reckless disregard of Alaniz's right to be free from excessive force is sufficient.

1 Given the facts, summary judgment must be denied on this claim under any applicable
2 standard.

3 **V. CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully requests that this Court deny
5 Defendants' Motion for Summary Judgment.

6 Any appeal to the Ninth Circuit should promptly be deemed frivolous, as it would
7 merely seek to avoid the jury's rightful role in resolving the factual disputes in this case.
8
9

10 Dated: February 7, 2025

LAW OFFICES OF DALE K. GALIPO

11
12 /s/ Cooper Alison-Mayne

13 Dale K. Galipo

14 Cooper Alison-Mayne

15 *Attorneys for Plaintiffs*
16
17

18 **CERTIFICATION OF COMPLIANCE**

19 The undersigned, counsel of record for Plaintiffs, certify that this brief contains
20 6941 words, which complies with the word limit of L.R. 11-6.1.

21 Dated: February 7, 2025

22 /s/Cooper Alison-Mayne

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